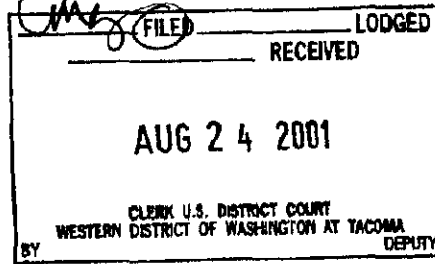


ENTERED
ON DOCKET
AUG 24 2001
BY DEPUTY *CMG*



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION, MARY ANNE BYRNE,
TREVA DILLS and SIEGRID SIEFFERT,
Personal Representative of the ESTATE OF
HEIDI M. MARI,

Plaintiffs,

v.

HANSON MOTORS, INC., HANSON
VOLKSWAGEN, INC. and THOMAS
LOUKS and JANE DOE LOUKS, and their
marital community,

Defendants.

HANSON VOLKSWAGEN, INC., d/b/a
HANSON MOTORS, INC.,

Third-Party Plaintiffs,

v.

MARY ANNE BYRNE, TREVA D. DILLS
and SIEGRID SIEFFERT, Personal
Representative of the ESTATE OF HEIDI M.
MARI,

Third-Party Defendants.

CASE NO. C00-5503RJB

ORDER GRANTING IN PART AND
DENYING IN PART: (1) MOTION OF
DEFENDANT HANSON MOTORS,
INC. FOR ENTRY OF PROTECTIVE
ORDER (Dkt. #63); and (2) HANSON
MOTORS, INC.'S MOTION FOR
ENTRY OF PROTECTIVE ORDER
(Dkt. #73)

THIS MATTER comes before the court on the above-referenced motions. The court is
familiar with the records and files herein, and documents filed in support of and in opposition to the

1 motions. For the reasons stated below, both motions should be granted in part and denied in part as
2 ordered herein.

3 1. Motion of Defendant Hanson Motors, Inc. for Entry of Protective Order (Dkt. #63)

4 This motion requests an order prohibiting the deposition of Investigator Jim Flint or
5 production of information and documents obtained by Jim Flint on the grounds that further
6 information from Mr. Flint is protected by the so called Attorney Work Product Doctrine.
7 Defendants¹ argue in the Reply to Oppositions to Motion for a Protective Order re Investigators
8 Records (Dkt. #97) that "Even If Flint's Investigation Constituted Retaliation It Is Not Actionable
9 Because It Did Not Lead to an Adverse Employment Consequence and Thus Any Evidence Relating
10 to the Investigation Is Irrelevant." However, discovery is appropriate for "... any matter, not
11 privileged, that is relevant to the claim or defense of any party, Relevant information need not
12 be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of
13 admissible evidence." Fed. R. Civ. P. 26(b)(1). Even if Flint's investigation did not lead directly to
14 an adverse employment consequence, if investigation constituted retaliation, it is discoverable, even
15 if not admissible, because it is relevant to plaintiffs' claim of sexual harassment and constructive
16 discharge. For example, if the evidence indicates that the investigation involved continuing
17 retaliation, it would certainly buttress the plaintiffs' claims. It is clearly discoverable if not
18 privileged.

19 The question presented by the motion is the extent of and boundaries of any work product
20 privilege. It is appropriate to engage in further discovery to determine the boundaries of any work
21 product privilege. As argued by the plaintiffs, there may have been a waiver, at least of some
22 information in the hands of Mr. Flint, and it may be that he possess information substantially needed
23

24 ¹In this Order the court refers to the EEOC, Mary Anne Byrne, Treva D. Dills and the Estate
25 of Heidi M. Mari collective as "Plaintiffs" and refers to Hanson Motors, Inc. and Hanson
26 Volkswagen, Inc. as "Defendants".

1 by the plaintiffs who are unable to obtain the information from any other source without undue
 2 hardship. However, as argued by the defendants, much of Mr. Flint's work may have been at the
 3 direction of and for Mr. Swanson, and may well be privileged.

4 Under these circumstances, it is appropriate for the court to deny the motion as made, but to
 5 place limitations on further discovery. An additional deposition of Mr. Flint may be scheduled, but
 6 it should be scheduled at the United States Courthouse in Tacoma, Washington, where the court will
 7 provide a conference room for the deposition. The deposition should be scheduled in coordination
 8 with the court's schedule ^{*} so that the court can attend as much of the deposition as may be necessary
 9 to rule on specific issues of privilege as they arise during the course of the deposition. Scheduling
 10 the deposition should be coordinated with the court's calendar. Mr. Flint and plaintiffs should be
 11 prepared to fully respond to all discovery at any such deposition, to include bringing to the
 12 deposition all documents requested by the plaintiffs and as yet undelivered. Mr. Swanson, as an
 13 officer of the court, should attend and be prepared to respond to inquiries regarding the scope and
 14 details of his employment of Mr. Flint.

15 To the extent stated above, Motion of Defendant Hanson Motors, Inc. for Entry of Protective
 16 Order (Dkt. #63) should be **GRANTED IN PART and DENIED IN PART**.

17 2. Hanson Motors, Inc. Motion for Entry of Protective Order (Dkt. #73)

18 In this motion, defendant requests the entry of a protective order "prohibiting discovery
 19 relating to Hanson Motors' business practices and procedures" and "for a protective order
 20 prohibiting dissemination of the names and addresses of the customers of Hanson Motors."

21 In the Estate of Mary's Response to Defendant Hanson Motors, Inc.'s Motion for Entry of
 22 Protective Order (Dkt. #83), that defendants characterized the defendant's motion as raising four
 23 issues:

- 24 (1) Whether discovery regarding the Defendant's business practice may be had; (2)
 25 Whether discovery regarding the Defendant's financial information may be had; (3)
 26 Whether the dissemination of the Defendant's financial information should be

** (Contact Jean Boring at (253) 593-6581.)*
[Signature]

1 allowed only for the purpose of this litigation and the trial; and (4) Whether the
2 dissemination of the customer information should be allowed only for the purpose of
this litigation and the trial.

3 Hanson Motors, Inc.'s business practices and procedures, including financial information,
4 are discoverable in this case. How the plaintiffs' compensation was computed is relevant to
5 damages, and it is appropriate for plaintiffs to determine through discovery whether their suspicion
6 that they were paid differently than males is supported by the evidence. Furthermore, punitive
7 damages being an issue, defendant's financial information is relevant and discoverable.

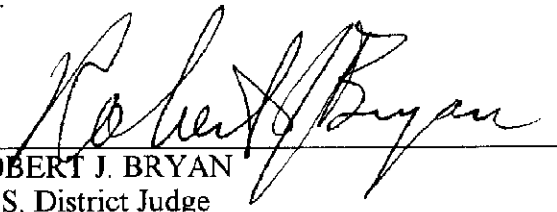
8 For the reasons argued by the defendants, however, at this point, use of business practice and
9 financial information should be limited to the purposes of this litigation and trial, and the
10 dissemination of customer information should also be so limited, subject, however, to further order
11 of the court. Issues such as the need to protect trade secrets or commercial information and the
12 privacy of customers can better be determined after the information is gathered.

13 For the foregoing reasons, Hanson Motors, Inc.'s Motion for Entry of Protective Order (Dkt.
14 #73) is **GRANTED IN PART AND DENIED IN PART** as stated above.

15 It is so **ORDERED**.

16 The Clerk of the Court is instructed to send uncertified copies of this Order to all counsel of
17 record and to any party appearing *pro se* at said party's last known address.

18 DATED this 24 day of August, 2001.

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26

ROBERT J. BRYAN
U. S. District Judge

car

United States District Court
for the
Western District of Washington
August 24, 2001

* * MAILING CERTIFICATE OF CLERK * *

Re: 3:00-cv-05503

True and correct copies of the attached were mailed by the clerk to the following:

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